

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
MOTOROLA, INC.)	File Nos. 0002438737-39, 0002438741-42,
)	0002438744, 0002438746, 0002438749,
Applications for Consent to Partition and)	0002438759
Disaggregate Licenses and Requests for Waiver of)	
Part 80 Rules to Permit Use of Maritime)	
Frequencies for Private Land Mobile Radio)	
Communications)	
)	
AMENDMENT OF THE COMMISSION'S)	PR Docket No. 92-257
RULES CONCERNING MARITIME)	
COMMUNICATIONS)	

ORDER ON RECONSIDERATION

Adopted: November 21, 2011

Released: November 29, 2011

By the Commission:

I. INTRODUCTION

1. This *Order on Reconsideration* dismisses two repetitious petitions for reconsideration. We have before us a petition for reconsideration filed February 3, 2010 by Environmental LLC (Environmental), Verde Systems LLC (Verde), Telesaurus Holdings GB LLC (THL), Intelligent Transportation & Monitoring Wireless LLC (ITM), and Skybridge Spectrum Foundation (Skybridge).¹ The petition seeks reconsideration of the Commission's decision² affirming an action by the Mobility Division (Division) of the Wireless Telecommunications Bureau (Bureau), which dismissed as defective an earlier petition for reconsideration. We also have before us a petition for reconsideration filed May 26, 2010 by Warren C. Havens (Havens) and most of the same Petitioners³ seeking reconsideration of the Commission's decision⁴ affirming an action by the Division dismissing as repetitious an earlier petition for reconsideration in another proceeding. Because the two petitions raise similar issues, we will address them together. As set forth below, we conclude that Petitioners have not presented any evidence or arguments that the dismissals of the prior petitions for reconsideration were improper. We therefore dismiss the instant petitions for reconsideration.

¹ Petition for Reconsideration Based on New Facts, And in the Alternative, Section 1.41 Request (filed Feb. 3, 2010) (Motorola Petition).

² Motorola, Inc., *Memorandum Opinion and Order*, 25 FCC Rcd 455 (2010) (*Motorola MO&O*).

³ Petition for Reconsideration Based on New Facts and Law, or in the Alternative, Section 1.41 Request (filed May 26, 2010) (Public Coast Petition). THL is not a party to the Public Coast Petition. We will refer herein to Environmental, Verde, THL, ITM, Skybridge, and Havens collectively as Petitioners.

⁴ Amendment of the Commission's Rules Concerning Maritime Communications, *Fourth Memorandum Opinion and Order*, PR Docket No. 92-257, 25 FCC Rcd 5008 (2010) (*Public Coast 4th MO&O*).

II. BACKGROUND

2. Motorola Petition. In 2006, MariTEL, Inc. (MariTEL) filed the above-captioned applications for consent to assign VHF Public Coast spectrum to Motorola, Inc. (Motorola) and associated requests for waivers to permit Motorola to provide this spectrum to third parties to satisfy public safety and other first responder requirements. No one filed petitions to deny the applications. After the Division substantially granted the waiver requests in 2007,⁵ most of the Petitioners requested partial reconsideration.⁶ The Division dismissed the petition for partial reconsideration in 2007 as procedurally defective, because Petitioners did not explain why they could not have participated earlier in the proceeding, given that the “facts and allegations that Petitioners contend justify the requested relief generally predate the public notice announcing that the assignment applications were accepted for filing.”⁷

3. Most of the Petitioners then filed an application for review, arguing that the Division had “asserted falsely that the Petitioners['] facts presented do not show that they arose or could not have been reasonably ascertained at an earlier stage in the proceeding.”⁸ The Commission denied the application for review in 2010, because Petitioners did not identify any facts that arose too late for them to participate earlier or explain why they could not, through the exercise of ordinary diligence, have ascertained any such facts earlier.⁹ Most of the Petitioners then filed the instant petition for reconsideration of the Commission’s denial of the application for review.¹⁰ The instant petition does not address whether Petitioners could have participated in the proceeding prior to filing the petition for partial reconsideration; instead, it relies on what Petitioners assert are “new facts” relating to the merits of the original decision to grant the assignment applications and waiver requests.

4. Public Coast Petition. In 2000, the Commission suspended the processing of pending mutually exclusive site-based Automated Maritime Telecommunications System (AMTS) applications, pending the resolution of its proposal to transition the AMTS service to geographic licensing.¹¹ Consequently, the Bureau did not process certain applications filed by Havens that the Bureau deemed mutually exclusive with applications filed by Mobex Communications, Inc. (Mobex). Havens filed a petition for reconsideration of the processing suspension.¹² In 2002, the Commission denied Havens’s

⁵ See Motorola, Inc., *Order*, 22 FCC Rcd 579, 583-85 ¶¶ 7-13 (WTB MD 2007).

⁶ See Petition for Partial Reconsideration And in the Alternative, Section 1.41 Request (filed Mar. 2, 2007; “Erratum Copy” filed Mar. 5, 2007). This petition was filed by Environmental (then known as AMTS Consortium LLC), THL, ITM, and Skybridge.

⁷ See Motorola, Inc., *Order on Reconsideration*, 22 FCC Rcd 18649, 18650-51 ¶ 6 (WTB MD 2007) (*Motorola Order on Reconsideration*) (citing 47 C.F.R. § 1.106(b)(1)).

⁸ See Application for Review at 1 (filed Nov. 19, 2007). This application for review was filed by Environmental (then known as AMTS Consortium LLC), THL, ITM, and Skybridge.

⁹ See *Motorola MO&O*, 25 FCC Rcd at 456 ¶ 4.

¹⁰ See para. 1, *supra*. MariTEL and Motorola filed oppositions on February 24 and February 26, 2010, respectively. Petitioners filed a supplement on May 27, 2010. Motorola subsequently asked the Commission to expedite its resolution of this and other licensing proceedings in which the Petitioners have filed opposition pleadings. See Letter, dated Mar. 11, 2011, from Chuck Powers, Director, Engineering and Technology Policy, Motorola Solutions, Inc., to P. Michele Ellison, Chief, Enforcement Bureau; Ruth Milkman, Chief, Wireless Telecommunications Bureau; and James Arden Barnett, Jr., Chief, Public Safety and Homeland Security Bureau.

¹¹ See Amendment of the Commission’s Rules Concerning Maritime Communications, *Fourth Report and Order and Third Further Notice of Proposed Rule Making*, PR Docket No. 92-257, 15 FCC Rcd 22585, 22599-600 ¶ 30, 22622 ¶ 78 (2000).

¹² Petition for Reconsideration or Waiver of Interim Order Regarding Suspension of Processing of Applications of Warren C. Havens (filed Jan. 8, 2001).

petition for reconsideration, adopted geographic licensing rules for AMTS spectrum, and dismissed the suspended applications.¹³ Havens filed a petition for reconsideration.¹⁴ In 2003, the Commission denied the petition, concluding that the Bureau did not err in accepting the Mobex applications for filing.¹⁵ Havens filed another petition for reconsideration.¹⁶ The Division dismissed that petition in 2008 as repetitious, because it was not supported by any new facts or changed circumstances.¹⁷ Most of the Petitioners then filed a petition for reconsideration,¹⁸ which the Division dismissed as repetitious in 2009.¹⁹ The Division also rejected as both untimely and unsupported Petitioners' challenge to the Bureau's conclusion in 2000 that the Havens and Mobex applications were mutually exclusive and rejected Petitioners' assertion that reconsideration was merited by evidence of bias by Bureau staff, noting that these allegations had been previously addressed.²⁰

5. Most of the Petitioners then filed an application for review.²¹ The Commission denied the application for review in 2010, concluding that the Division's 2008 and 2009 dismissals were appropriate pursuant to Section 1.106(k)(3) of the Commission's Rules, which states, "A petition for reconsideration of an order which has been previously denied on reconsideration may be dismissed by the staff as repetitious."²² The Commission also rejected Petitioners' challenge to the Bureau's conclusion that the Havens and Mobex applications were mutually exclusive, their allegations of bias by Bureau staff, and their request for an evidentiary hearing.²³ Most of the Petitioners then filed the instant petition for reconsideration of the Commission's denial of the application for review.²⁴ The instant petition does not address whether Petitioners' prior petitions for reconsideration were properly dismissed as repetitious; instead, it relies on what Petitioners assert are "new facts" relating to whether the Havens and Mobex applications were mutually exclusive and to the merits of certain AMTS geographic licensing rules.

¹³ See Amendment of the Commission's Rules Concerning Maritime Communications, *Second Memorandum Opinion and Order and Fifth Report and Order*, PR Docket No. 92-257, 17 FCC Rcd 6685, 6692 ¶ 15, 6696 ¶ 24, 6720 ¶ 83, 6721 ¶ 90 (2002).

¹⁴ Petition for Reconsideration (filed May 8, 2002).

¹⁵ See Amendment of the Commission's Rules Concerning Maritime Communications, *Third Memorandum Opinion and Order*, PR Docket No. 92-257, 18 FCC Rcd 24391, 24398 ¶ 17 (2003).

¹⁶ Petition for Reconsideration (filed Dec. 18, 2003). Havens also filed a judicial appeal, which was dismissed as premature in light of the pendency of the petition for reconsideration. See *Havens v. FCC*, Nos. 03-1446, 03-1447 (D.C. Cir. Apr. 22, 2004) (per curiam).

¹⁷ See Amendment of the Commission's Rules Concerning Maritime Communications, *Order on Further Reconsideration*, PR Docket No. 92-257, 23 FCC Rcd 329, 331 ¶ 8 (WTB MD 2008).

¹⁸ Petition for Reconsideration of the Order on Further Reconsideration Based on New Facts, And Related Petition for Reconsideration of the Third MO&O Based on Said New Facts (filed Feb. 13, 2008). This petition was filed by Environmental (then known as AMTS Consortium LLC), Verde (then known as Telesaurus VPC LLC (TVL)), ITM, and Skybridge.

¹⁹ See Amendment of the Commission's Rules Concerning Maritime Communications, *Second Order on Further Reconsideration*, PR Docket No. 92-257, 24 FCC Rcd 4150, 4150 ¶ 1 (WTB MD 2009).

²⁰ See *id.* at 4152-53 ¶¶ 6-7.

²¹ Application for Review (and for reasons stated, Petition for Reconsideration on New Facts if the Commission Chooses[]) (filed May 8, 2009). This application for review was filed by Environmental, Verde (then known as TVL), ITM, and Skybridge.

²² See *Public Coast 4th MO&O*, 25 FCC Rcd at 5011 ¶ 4 (citing 47 C.F.R. § 1.106(k)(3)).

²³ *Id.* at 5012-13 ¶¶ 5-7.

²⁴ See para. 1, *supra*. Maritime Communications/Land Mobile, LLC filed an opposition on June 9, 2010. Havens also filed a judicial appeal, which was dismissed as premature in light of the pendency of the petition for reconsideration. See *Havens v. FCC*, Nos. 11-1047, 11-1048, 11-1049 (D.C. Cir. May 17, 2011) (per curiam).

III. DISCUSSION

6. Section 1.106(b)(2) of the Commission's Rules provides that a petition for reconsideration of the denial of an application for review will be entertained only if "(i) [t]he petition relies on facts which relate to events which have occurred or circumstances which have changed since the last opportunity to present such matters; or (ii) [t]he petition relies on facts unknown to the petitioner until after his last opportunity to present such matters which could not, through the exercise of ordinary diligence, have been learned prior to such opportunity."²⁵ A petition that fails to introduce relevant new facts or changed circumstances may be dismissed as repetitious.²⁶

7. The instant petitions stand in the same procedural posture as a petition filed by Havens that the Commission addressed in 2010. In that proceeding, the Division's predecessor dismissed a petition for reconsideration as untimely.²⁷ The Commission denied Havens's application for review, concluding that the petition for reconsideration had properly been dismissed.²⁸ Havens then filed a petition for reconsideration that did not address whether the earlier petition for reconsideration had properly been dismissed but instead relied on evidence relating to the merits of the Division action of which he had initially sought reconsideration. The Commission dismissed the petition for reconsideration:

As noted above, a petition for reconsideration of an order denying an application for review must rely on relevant new facts or circumstances. While the exhibits arguably are new, we conclude that they are not relevant. The issue in the *Memorandum Opinion and Order* was whether Havens's petition for reconsideration was properly dismissed in 2005 as untimely filed. The exhibits to the instant petition for reconsideration shed no light on this question. Instead, they relate to the merits of the underlying applications and previous requests. Consequently, we dismiss the instant petition.²⁹

8. Similarly, the issue in the *Memorandum Opinion and Order* in the Motorola proceeding was whether the Division properly dismissed the petition for partial reconsideration of the *Division Motorola Order*, because Petitioners did not demonstrate that they could not have participated in the proceeding earlier. The issue in the *Fourth Memorandum Opinion and Order* in the Public Coast proceeding was whether the Division's 2008 and 2009 dismissals were appropriate pursuant to Section 1.106(k)(3) because the petitions at issue were repetitious. The instant petitions for reconsideration rely on exhibits that shed no light on these questions, relating instead to the merits of the underlying actions. Consequently, we dismiss the instant petitions.³⁰

²⁵ 47 C.F.R. § 1.106(b)(2).

²⁶ See Emery Telephone, *Memorandum Opinion and Order*, 15 FCC Rcd 7181, 7184 ¶ 5 (1999) (citing 47 C.F.R. § 1.106(b)(3)); see also, e.g., Sagir, Inc., *Memorandum Opinion and Order*, 18 FCC Rcd 15967, 16004 ¶ 16 (2003).

²⁷ See Warren C. Havens, *Order on Reconsideration*, 20 FCC Rcd 3995, 3996-97 ¶ 6 (WTB PSCID 2005), *aff'd*, *Order on Further Reconsideration*, 21 FCC Rcd 3553, 3555 ¶ 5 (WTB 2006). Pursuant to a Commission reorganization effective September 25, 2006, certain duties of the Public Safety and Critical Infrastructure Division were assumed by the Mobility Division. See Establishment of the Public Safety and Homeland Security Bureau, *Order*, 21 FCC Rcd 10867 (2006).

²⁸ See Warren C. Havens, *Memorandum Opinion and Order*, 23 FCC Rcd 3210, 3212-13 ¶ 7 (2008).

²⁹ See Warren C. Havens, *Order on Reconsideration*, 25 FCC Rcd 511, 513 ¶ 5 (2010) (footnotes omitted), *recon. dismissed*, *Order on Further Reconsideration*, 25 FCC Rcd 2123 (WTB MD 2010), *recon. dismissed*, 26 FCC Rcd 10888 (2011).

³⁰ Finally, we deny Petitioners' requests that the instant petitions, if not grantable as petitions for reconsideration, be treated as informal requests under Section 1.41 of the Commission's Rules, 47 C.F.R. § 1.41. Petitioners previously
(continued....)

IV. CONCLUSION

9. Petitioners have presented no grounds for reconsideration of the Commission's decisions denying review of the dismissals of the Petitioners' defective petitions for reconsideration. We therefore dismiss the instant petitions for reconsideration as repetitious.³¹

10. Accordingly, IT IS ORDERED that, pursuant to Sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 405, and Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, the Petition for Reconsideration Based on New Facts, And in the Alternative, Section 1.41 Request filed February 3, 2010 by Environmental LLC, Verde Systems LLC, Telesaurus Holdings GB LLC, Intelligent Transportation & Monitoring Wireless LLC, and Skybridge Spectrum Foundation IS DISMISSED.

11. IT IS FURTHER ORDERED that the Petition for Reconsideration Based on New Facts and Law, or in the alternative Section 1.41 Request filed May 26, 2010 by Environmental LLC, Verde Systems LLC, Intelligent Transportation & Monitoring Wireless LLC, Skybridge Spectrum Foundation, and Warren C. Havens IS DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

(...continued from previous page)

have been informed "that 'a party cannot evade the procedural requirements of Section 1.106 by concurrently requesting the same relief under Section 1.41.'" See *Motorola MO&O*, 25 FCC Rcd at 456 n.8 (quoting *Motorola Order on Reconsideration*, 22 FCC Rcd at 18651 ¶ 7), and cases cited therein.

³¹ We dismiss as unauthorized Petitioners' request in the alternative that its pleadings be accepted under Section 1.41. See 47 C.F.R. § 1.41 (providing for the submission of informal requests for action "[e]xcept where formal procedures are required"). Even if we were to accept the pleadings as Section 1.41 informal requests, however, Petitioners' submissions would, for the reasons specified herein, be dismissed as repetitious.